

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**
ASHEVILLE DIVISION
CASE NUMBER 1:20CV66

CARYN DEVINS STRICKLAND,)	
)	
Plaintiff,)	
)	
v.)	
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants.)	

**DEFENDANTS' NOTICE OF CHALLENGE TO CONFIDENTIALITY
DESIGNATION REGARDING PLAINTIFF'S RE-OPENED DEPOSITION**

Pursuant to paragraphs D(1)-(6) of the Court's Stipulated Protective Order Regarding Confidential Information ("Protective Order"), ECF No. 183, Defendants respectfully submit this Notice of Challenge to Confidentiality Designation Regarding Plaintiff's Re-Opened Deposition.

The Court's Protective Order allows the parties to designate certain information produced in discovery as confidential and establishes a procedure for challenging such designations. Specifically, the "Challenging Party shall initiate" such a challenge "by providing to the Designating Party (a) written notice of each designation it is challenging and (b) a description of the basis of each challenge." ECF No. 283 at D(2). If the parties cannot reach a resolution after a seven-day meet and confer period, "the Challenging Party shall file with the Court its written notice of the challenged designations." *Id.* at D(5).

On October 27, 2023, Defendants served on Plaintiff a notice challenging Plaintiff's designation of her entire re-opened deposition transcript as confidential.¹ That Notice is attached

¹ Defendants are not seeking to file an unredacted copy of Plaintiff's re-opened deposition transcript under seal because the Court has instructed the parties that "[t]he parties' protective order as to confidentiality is not to be cited as a ground for sealing." Order, ECF No. 203, at 2.

hereto as Exhibit A, and Plaintiff's confidentiality designation is attached as Exhibit B. Defendants' counsel offered to discuss this matter with Plaintiff's counsel on October 27, November 1, and November 3, and the parties have conferred through email, but Plaintiff has not withdrawn the designation.

For the reasons explained in Defendants' Notice, the testimony at issue is not confidential. *See generally* Ex. A. Accordingly, the Court should strike Plaintiff's confidentiality designation over the transcript of her re-opened deposition.²

Defendants' counsel conferred with Plaintiff's counsel about this notice, and Plaintiff's counsel asked the following to be included herein:

Pursuant to paragraphs D(3) and (5) of the parties' Protective Order, Plaintiff opposes Defendants' Notice and will file a response setting forth the basis for the referenced confidential information within the time frame provided by the local rules. *See* ECF No. 183; LCvR 7.1(e) (providing 14 days to file a response). Plaintiff has a profound interest in the rights which are implicated by this filing, in part, because the information Defendants improperly seek to disclose jeopardizes constitutionally protected liberty and privacy interests. *See, e.g.*, ECF No. 320. Under these circumstances, Plaintiff is entitled to an opportunity to be heard through a timely filed response. If the Court were to grant Defendants' request, however, Plaintiff requests that the Court stay its decision pending an opportunity to file a motion to seal and, if necessary, an opportunity to challenge an adverse decision through an interlocutory appeal. *See United States v. Doe*, 962 F.3d 139, 143 (4th Cir. 2020) ("[B]oth sealing and unsealing orders are appealable collateral orders.")

Dated: November 6, 2023

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

CARLOTTA P. WELLS
Assistant Branch Director

² Defendants previously filed a Notice of Challenge to Confidentiality Designation and Motion for Leave to File Unredacted Versions of ECF Nos. 294 and 295. ECF No. 299. That notice, which remains pending, challenges Plaintiff's confidentiality designations relating to her first deposition on April 25, 2023. This Notice, however, relates to the transcript of Plaintiff's October 12, 2023, re-opened deposition, the entirety of which Plaintiff has designated as confidential.

/s/ Joshua Kolsky

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